



Appeal Decision

Site visit made on 17 January 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/Y5420/C/22/3301803

3 Temple Terrace, Vincent Road, London N22 6ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs S Fernando against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 13 May 2022.
 - The breach of planning control as alleged in the notice is a) the erection of single storey rear extension and b) the erection of a partly enclosed projecting canopy roof.
 - The requirements of the notice are:
 1. Demolish the single storey rear extension in its entirety (in the location indicated by the red lines in the photo overleaf).
 2. Demolish the partly enclosed projecting canopy roof (in the location indicated by the yellow lines in the photo overleaf).
 3. Remove from the land any debris arising from compliance with the above requirements.
 - The period for compliance with the requirements is: Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (b)

2. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.
3. It is readily apparent from the appeal submissions and my site visit that the single storey rear extension and partly enclosed canopy roof which are subject of the enforcement notice have been erected and exist on site. It is therefore clear that the alleged breach of planning control has occurred as a matter of fact. Accordingly, the appeal under ground (b) fails.

Ground (c)

4. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
5. The appeal property is a mid-terrace dwelling located on the eastern side of Vincent Road. The dwelling includes a single storey rear extension which comprises of three physically attached sections. The "first section", which directly projects from the rear elevation of the main dwelling and is not attacked by the notice, is a fully enclosed full-width extension with sliding patio doors providing internal access to the second section.

6. The "second section", outlined in red on the photograph attached to the notice, is a fully enclosed full-width single storey extension constructed of timber walls and a polycarbonate roof. The "third section", outlined in yellow on the photograph attached to the notice, is a partly enclosed timber canopy with a polycarbonate roof which has been erected over a timber ramp that provides wheelchair access to the second section of the extension.
7. The Council have provided a Google Earth image from 2018, a Google Street View image from 2019, and a photograph taken from a neighbouring property dated April 2021. These images all show an open sided timber framed structure in the position of the current "second section" of the extension. The Council are of the view that the open sided timber framed structure was replaced by the current "second section" of the extension and consider it to be unauthorised. The "third section" is not evident in any of these images and the Council therefore consider it to be a new addition and unauthorised.
8. The appellant however contends that the works carried out only amount to the renovation, upgrade, and repair of the existing rear extension at the property. The carrying out of maintenance, improvement or other alterations of any building which do not materially affect the external appearance of the building does not constitute development¹.
9. However, the scale of this operation in relation to what previously existed is very large and cannot, therefore, be regarded as merely maintenance or repair. Though it is possible that the polycarbonate roof and timber posts from the open sided structure have been retained in the "second section", it has now been fully enclosed with timber panelling with windows and a door installed on its rear elevation. The partly enclosed timber canopy has also been added. The "second section" of the extension is now entirely different to what previously existed on site, and the works have resulted in a material alteration to the appearance of the building. Consequently, the works constitute development.
10. The appellant also submits that the Council's website advises that there is no need for planning permission for 'minor alterations'. I have not been provided with any specific evidence or details regarding any planning advice displayed on the Council's website. Nevertheless, given that I have concluded that the works carried out amount to development, it is necessary to assess whether that development benefits from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ("the GPDO").
11. Class A of Part 1 of Schedule 2 of the GPDO permits the 'enlargement, improvement or other alteration of a dwellinghouse' subject to meeting various conditions and limitations. These include paragraph A.1(f) which states that development is not permitted if *'the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse more than 4 metres in the case of a detached house, or 3 metres in any other case'*.
12. Paragraph A.3(a) also states that *'the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'*.

¹ S55(2)(a)(ii) of the Town and Country Planning Act 1990, as amended

13. The development clearly extends beyond the rear wall of the original dwellinghouse by significantly more than 3 metres. In addition, the materials used in its external construction, including the timber panelling and polycarbonate roof, are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The development therefore fails to meet the conditions and limitations set out under paragraphs A.1(f) and A.3(a) and is not permitted development.
14. To conclude, the works carried out constitute development and are not permitted under Class A of Part 1 of Schedule 2 of the GPDO. It is therefore development which has been carried out without planning permission and hence constitutes a breach of planning control. Accordingly, the appeal on ground (c) fails.

Ground (d)

15. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. The matter alleged is operational development and the relevant period is four years. It is for the appellant to show, on the balance of probability, that the development was substantially completed over four years prior to the issue of the enforcement notice. As the notice was issued on 13 May 2022, the relevant date is therefore 13 May 2018.
16. There is no dispute between the parties that the "first section" of the extension was substantially completed more than four years prior to the notice being issued. Consequently, this element is not attacked by the notice. The appellant however contends that the single storey rear extension (the "second section") and partly enclosed projecting canopy roof (the "third section") that are subject of the notice were built around 2012. In support of this, the appellant has provided an array of receipts, invoices, and estimates dated 2012 for various building materials and items.
17. The appellant's evidence does not have to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal. The appellant's evidence would however have to be sufficiently precise and unambiguous.
18. The Council has provided Google Earth and Street View images from June 2018 and March 2019, and a photograph taken from the neighbouring property which is dated 6 April 2021. None of these images show the development subject of the enforcement notice in situ, but instead show the previous open sided timber structure which existed in the position of the current "second section". For the reasons outlined in the ground (c) appeal above, the works carried out constitute development. The test therefore is not when the previous open sided timber structure was constructed, but when the more recent work which resulted in a material alteration to the building took place. The images provided by the Council all indicate that this would have taken place after the 6 April 2021.
19. Although the invoices, receipts, and estimates provided by the appellant are dated 2012 and many are addressed to either the appellant and/or 3 Temple Terrace, it is not clear that they relate specifically to the development subject of the enforcement notice. In particular, the estimates provided refer to works

to a range of rooms across No. 3 including to bedrooms and bathrooms. Whilst the estimates do include works to an 'extension', they list new concrete block walls, plasterboard interior walls, and a new bathroom with a sink, toilet, and shower. It was clear from my visit that none of these works are found within either single storey rear extension or the partly enclosed projecting canopy roof.

20. The invoices and receipts provided also include the purchase of a UPVC patio door which is not found in the development attacked by the notice. Other more general items such as paint, building sand, screws, filler, and glue are also included. It is difficult to link such items to any specific works with any certainty. Whilst it is possible that some of the items purchased may have been used in the construction of the previous open sided timber structure, for the reasons already outlined this would not aid the appellant's case in any event. I therefore find the appellant's evidence to be imprecise and ambiguous.
21. The appellant also states in a document dated 4 September 2021 to the Council's enforcement officer that the '*additional rear extension – e.g wooden slope/ramp (that is located within the red lines of your image) was built during the month of August 2021*'. Although this statement is in relation to the "third section", I consider it likely that the works to the "second section" (which the appellant considered to be a renovation, upgrade, and repair) also took place around this time.
22. The evidence put forward by the appellant is contradicted by the images provided by the Council. Overall, the available evidence suggests that the development was undertaken at some point after the 6 April 2021. The appellant has therefore failed to show, on the balance of probability, that the development was substantially complete over four years prior to the issue of the enforcement notice. Accordingly, the ground (d) appeal fails.

Other Matters

23. Much of the appellant's representations relate to the conduct of the Council during their investigation and the subsequent decision to take enforcement action. Such matters however fall outside the scope of this appeal.
24. Age and disability are 'relevant protected characteristics' for the purposes of the Equality Act 2010 and the Public Sector Equality Duty. However, before me are legal grounds of appeal only. Duties arising under the Public Sector Equality Act and other duties such as the Human Rights Act 1998 will apply in the exercise of a discretion. They do not come into effect where the substantive questions are whether or not, as a matter of fact and law, the matters alleged have occurred, are in breach of planning control, or are immune from enforcement action. These are not discretionary questions.

Conclusion

25. For the reasons given above I conclude that the appeal fails. I have therefore upheld the enforcement notice.

David Jones

INSPECTOR